88-1071

Supreme Court, U.S.
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CASE NO._____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1988

JESSIE GETER, Administratrix of the Estate of THOMAS GETER, JR., Deceased,

Petitioner,

vs.

RICHARD WILLE, Sheriff of Palm Beach County, Florida, and GERALD TOLES, Director of Corrections of Palm Beach County, Florida,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR RESPONDENTS

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(a)

QUESTION PRESENTED FOR REVIEW

Should the United States Supreme Court invest its limited resources by exercising its judicial discretion to review, by way of Writ of Certiorari, the decision of the Eleventh Circuit Court of Appeals which found that the Record was void of evidence or proof that the named Defendants, in their official capacity, were in any way involved with the Plaintiff's death?

(b)

Petitioner's Statement of the parties to the proceeding is agreed to by the Respondents.

(c)

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(e)

JURISDICTIONAL GROUNDS

Petitioner's Statement of Jurisdictional Grounds is agreed to by the Respondents.

(f)

STATUTES AND RULES

U.S. Supreme Court Rule 17.1

(Text included in Appendix)

Title 42, USC, Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress.

(g)

STATEMENT OF THE CASE

With one addition and except for the characterizations, hyperbole, invective, and syntax, the Petitioner's Statement of the Case is accepted. The addition is to quote Paragraph Three of the Plaintiff's Complaint: "The Defendants are the duly qualified agerts of the County of Palm Beach, State of Florida, and are sued in their official capacity."

(h)

SUMMARY OF ARGUMENT

This is not a case in which there are special and important reasons for this Court granting a Writ of Certiorari.

(i)

ARGUMENT

Recognizing that Rule 17.1 does not set forth exhaustive parameters of when Certiorari will be granted, the Rule nevertheless strongly suggests the kinds or types of cases in which this Court will grant Certiorari. In summary, it indicates that Certiorari will be granted only in cases of peculiar gravity and general importance or in order to secure uniformity of decisions. It is suspected that the gravamen of the Petition is to demonstrate that the Eleventh Circuit, in the case sub judice, is in conflict with decisions of other Circuit Courts of Appeal, but the cases cited by Petitioner are all distinguishable or inapposite.

Estelle v. Gamble, 429 U.S. 97 (97 S.Ct. 285 1976), Miranda v. Mundy, 770 F.2d 255 (1st Cir. 1985), McClellan v. Facteau, 610 F.2d 693 (10th Cir. 1979)

and Slakan v. T.C. Porter 737 F.2d 368 (4th Cir. 1984) all involve situations where the supervisory personnel were sued in their individual capacity. In the instant case, the two Defendants were sued only in their official capacity. As will be argued more extensively later, this difference is crucial. Love v. Sheffield, 777 F.2d 1453 (11th Cir. 1985) is not despositive of anything in that the issue therein was the sufficiency of evidence.

Ancata v. Prison Health Services, Inc., 769 F.2d 700 (1st Cir. 1985) is closer to the mark. There are, however, two major distinctions. First of all, in Ancata, Plaintiff alleged that there was a custom, usage or policy which led to the Plaintiff's injuries. The Court in Geter found that there simply was no evidence showing that the Sheriff's Office or the Jail had any policies,

customs or usages relating to the events that led to the Plaintiff's death. Secondly, all the Court in Ancata was deciding was whether the Complaint had stated a cause of action so as to withstand a Motion to Dismiss, whereas in the instant case, the Eleventh Circuit decided that, not only was there insufficient pleading of a custom, but there was absolutely no evidence of a custom or policy.

Petitioner has not cited any Florida Court of last resort in conflict with the decision of the Eleventh Circuit and, therefore, the decision does not involve a Federal question in conflict with a State Court of last resort. Neither has the Petitioner attempted to show that the decision of the Eleventh Circuit so far departed from the accepted and usual course of judicial proceedings as to call for this court to exercise its

power of supervision. Lastly, there does not appear to be any claim that the Eleventh Circuit has decided an important question of Federal Law which has not been to date decided by the Supreme Court.

Petitioner seems to suggest that the issue is whether, on the facts which Petitioner argues so inflamatorily, the Eleventh Circuit erred in its decision. Respondents submit that, if this Court grants a Writ of Certiorari, that will then be the issue. The issue before this Court now, however, is whether the decision of the Eleventh Circuit involved such special and important issues or was so in conflict with other Circuit Court opinions as to require the expenditure of this Court's judicial resources.

Even a cursory reading of the Eleventh Circuit's opinion demonstrates that this question must be answered in

the negative. The Eleventh Circuit determined two things: (1) "Supervisory officials cannot be held liable for the acts of employees solely on the basis of respondeat superior" and (2) "Without any evidence that the supervisory employee participated in or condoned the alleged deprivations, there can be no Section 1983 liability for the acts of the subordinates." Geter v. Wille, Page 3259. These holdings are clearly within the mainstream of decisional law.

Petitioner wants to have the issuance of the Writ of Certiorari turn on the facts of the case. This is why they argue the facts so vociferously and extensively. Egregious facts, however, are not the reasons for granting Writs of Certiorari. It is, however, the facts, or more precisely the lack of facts, which lie at the heart of this case.

Plaintiff chose to sue only two

Defendants and chose to sue those two Defendants only in their official capacity. By so doing, he in effect filed a suit against Palm Beach County. As the Eleventh Circuit said in Footnote 1, "Thus, the law governing the liability of governmental entities under Section 1983 controls the liability of the Sheriff and the Director of Corrections in their official capacity." By so doing, the Plaintiff, albeit perhaps inadvertently, was precluded from proving what the Sheriff and Director of Corrections knew or should have known so as to thereby create their personal liability.

Because there is no vicarious liability under Section 1983 and because the Petitioner, by his pleadings, had in effect sued the County, the Petitioner had to establish that the Sheriff's Office had created a custom or policy,

which custom or policy was the proximate cause of the decedent's injuries. The Eleventh Circuit found that there simply was no evidence in the record of such policies, customs or usages.

At bottom, the Eleventh Circuit found that the Plaintiff had failed to prove the case that he pled. Plaintiff conceivably proved a case against the subordinates or perhaps proved a case of violation of state law, but that was not the case he pled and thereby had to prove. He pled that the County, or the office of the Sheriff, had violated the decedent's civil rights. He had no evidence of that and thereby his case fails.

This is not a case where the decision of the Eleventh Circuit is out of step with anyone. There is nothing in the Eleventh Circuit decision which could not be cited with approval by any other

court dealing with a Section 1983 action against supervisory personnel in their official capacities. There is, therefore, no reason for the United States Supreme Court to grant Certiorari.

SUMMARY

This is not a case involving any special or important decisions nor is this a case in which the decision of the Eleventh Circuit is in conflict with the decisions of other Federal Courts of Appeals on the same matters. This is a case where the Plaintiff's proof, to the extent it was adduced, failed to prove that which he pled. As such, this is not a case in which this Court should grant a Writ of Certiorari.

Respectfully submitted,

BY: _____
JAMES C. BARRY
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ADAMS, COOGLER, WATSON & MERKEL, P.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief for Respondents and Appendix thereto have been furnished, by mail, to JACK W. SMITH, ESQUIRE, Attorney for Petitioner, Post Office Box 728, Dothan, Alabama 36302 this 16th day of December, 1988.

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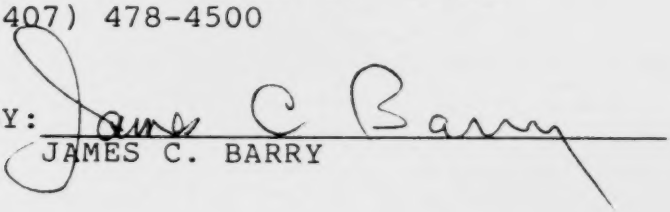
BY: 
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APPENDIX TO BRIEF
FOR RESPONDENTS

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Rule 17. Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.